

Senate Bill 227

By: Senator Wiles of the 37th

A BILL TO BE ENTITLED  
AN ACT

To amend Article 2 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to searches with warrants, so as to provide for the issuance of search warrants authorizing the installation, use, and removal of tracking devices subject to certain conditions; to provide for a definition; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to searches with warrants, is amended by adding a new Code section to read as follows:

"17-5-22.1.

(a) As used in this Code section, the term 'tracking device' means an electronic or mechanical device which, when placed or installed upon a person or object, permits other persons to remotely determine or track the position and movement of such person or object, but the term shall not include:

(1) Devices, such as a cellular telephone or other personal electronic device, which include as an incidental feature the capability of determining the location of such devices by utilizing a global positioning satellite system; or

(2) Devices which are installed or utilized with the knowledge and consent of the owner or user of the device or, in the case of a minor, with the knowledge and consent of his or her parent or guardian.

(b) Upon the written application of any certified peace officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws and otherwise as authorized in Code Section 17-5-20 under oath or affirmation, a judge of any court in this state authorized to issue search warrants pursuant to Code Section 17-5-21 may issue a search warrant authorizing the installation, use, and removal of a tracking device subject to the following conditions:

(1) The application shall be made before a judge of the superior court with the authority to issue warrants within the geographic jurisdiction where such tracking device is to be installed;

(2) The application shall set forth facts sufficient to establish probable cause to believe that a particular crime has been committed, is being committed, or will be committed and that the person or object to be tracked is involved, was involved, or will be involved in the commission or facilitation of such crime;

(3) The application shall set forth facts sufficient to establish probable cause to believe that the use of a tracking device will result in the prevention of a criminal offense under investigation, the seizure of evidence relevant to the investigation or prosecution of a criminal offense, or the whereabouts of a fugitive from justice or a suspect, victim, or witness relating to a criminal offense;

(4) The application shall particularly describe the person or object upon which a tracking device is to be installed;

(5) A tracking device authorized by this Code section shall be installed within ten days after the issuance of the warrant and shall be installed within the geographic jurisdiction of the issuing judge. If the tracking device is not installed within that time, the warrant shall be returned to the issuing judge as unserved. The date and time of installation shall be recorded and included in the return made to the issuing judge;

(6)(A) A search warrant issued pursuant to this Code section shall authorize the use of a tracking device for a reasonable period of time, not to exceed 45 days, except as provided in subparagraph (B) of this paragraph, measured from the date such tracking device is installed upon the person or object to be tracked.

(B) Upon written application for extension and upon a finding of good cause, the issuing judge may authorize one or more extensions for a reasonable period of time, not to exceed 45 days each;

(7) When the period of time authorized for the use of a tracking device or the last extension thereof has expired, monitoring of such tracking device shall be discontinued immediately;

(8) Within ten days after the period of time authorized for the use of a tracking device or the last extension thereof has expired, the officer executing the warrant shall make a return thereof to the issuing judge. The return shall specify the date and time such tracking device was installed and the address or location of installation of such tracking device, the date and time that monitoring was discontinued, and a general summary of the movements of the object or person tracked during the duration of the surveillance;

(9) Within ten days after the period of time authorized for the use of a tracking device or the last extension thereof has expired, the officer executing a search warrant issued

pursuant to this Code section shall serve a copy of such warrant on the person who was tracked or whose property was tracked. Service shall be accomplished by delivering a copy to such person or by leaving a copy at such person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location or by mailing a copy to such person's last known address. Upon the request of the state or the officer executing the warrant, the issuing judge may delay notice for a reasonable time; provided, however, that where such notice is delayed, such notice shall be served no later than ten days after issuance of an arrest warrant, indictment, or accusation based wholly or in part upon information derived from the use of a tracking device;

(10) A tracking device installed and used under the authority of a warrant issued pursuant to this Code section may be used within the jurisdiction of the issuing court as well as outside such jurisdiction if such tracking device was installed within that jurisdiction; and

(11) The warrant and any extension thereof, the application upon which the warrant and extensions, if any, were issued, the affidavit supporting the warrant and extensions, if any, the return, and any request for and order granting a delay in the serving of notice shall be filed with the clerk of the court of the issuing judge, or with the court if so ordered, at the time the return is made or when the warrant has been returned not executed; provided, however, that the issuing judge may order that such documents be sealed while an investigation remains ongoing until such time that an arrest warrant, indictment, or accusation based wholly or in part upon information derived from the use of the tracking device is issued."

## **SECTION 2.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

## **SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.